

**Testimony of Julie Kitka, President
Alaska Federation of Natives**

Oversight Hearing on Alcohol and Law Enforcement in Alaska

**Before the Senate Committee on Indian Affairs
October 4, 2000**

Chairman Campbell, Vice Chairman Inouye, and other committee members, my name is Julie Kitka and I am President of the Alaska Federation of Natives (AFN), the largest Native organization in Alaska. AFN's membership includes 178 Alaska Native Villages, 13 regional Native corporations and 12 Regional non-profit tribal associations.

I want to thank you for the opportunity to testify today about the serious problem of alcohol abuse, the behavioral tragedies that flow from it and the lack of law enforcement in rural Alaska. It is important that you are taking time to hear about this problem and to work with us on ways to effectively deal with the devastating and pervasive problems caused by alcohol in Native villages.

As many of you know, AFN has for more than a decade, sought to bring attention, understanding and solutions to the problem of substance abuse and related violence among Alaska Natives. The problem has reached epidemic proportions with our population increase and the outlook is very grim unless new effective measures are enacted immediately. Our population is currently 110,000, and expected to double every 23 years. In 2020 our population will be over 250,000 people. Despite the best efforts of many people, and the increase in funding for education, prevention and treatment, we have seen little progress. Today, I would like to outline for you the scope of the problem, explain some of the difficulties Alaska Native Villages have encountered in their efforts to deal with alcohol abuse and violence, and propose to you a legislative solution that we believe will give Alaska Native Villages the tools they need to effectively address the problem.

In 1989, inspired by a Pulitzer Prize winning series by the Anchorage Daily News and AFN's "Report on the Status of Alaska Natives: A Call for Action, Congress created the Alaska Natives Commission and charged it with carrying out the first comprehensive assessment of the social, cultural and economic condition of Alaska Natives since the Federal Field Commission in 1968. The report identified the number one health problem among Alaska Natives as alcohol abuse – characterized as both a plague and an epidemic every bit as threatening as tuberculosis or influenza that ravaged the Alaska Native population at the turn of the century. In 1994, the Alaska Natives Commission summarized its extensive hearings and conclusions in a three-volume report. The Report warned, in no uncertain terms that "an entire population is at risk . . . of leading lives, generation to generation, characterized by violence, alcohol abuse and cycles of personal and social destruction." It went on to chronicle chilling statistics:

- The annual Native death rate was more than three times the national average, much of it was alcohol-related;
- Alaska Native infant mortality and Fetal Alcohol Syndrome rates were more than twice the national averages (the FAS rate being 5.1 per 1,000 live births);

- One out of every eleven Native children had received child protection services in prior years;
- Thirty (30) per cent of child abuse/neglect/injury reports to the Alaska Department of Health and Social Services in prior years has involved Native children – almost double the rate of Natives in the general population;
- Almost 1 out of every 8 Native males from ages 14-17 had spent time in juvenile detention;
- Alcohol-induced violence, especially sexual violence against women and children, were epidemic, contributing to the fact that the rate of Natives in the state's prison population (32%) is double their percentage of the general population;
- The Native murder rate is four times the national average;
- In the late 1980's, the suicide rate for Native males from ages 20 to 24 was 30 times the national suicide rate;
- Since Statehood the suicide rate has increased 500%; and
- The vast majority of all the tragedies listed above were alcohol related.

That was six years ago, and to date there has been no significant improvement in these statistics. The number one conclusion of the Commission was that Alaska's Native people were suffering from a "disease of dependency", resulting from 'the systematic assumption of responsibility by outsiders,' the most tragic symptom of which is alcohol abuse and the violence, destruction and death that goes with it. The Commission concluded that the only cure for this disease was to return to Native people the power and responsibility to manage their own affairs and communities. The growing Native sobriety movement is likewise focused on individuals and villages taking responsibility for their own lives and their own communities.

The clear message I want to send today is that the tragic consequences of alcohol, drug and inhalant abuse in Alaska Native Villages *can only be resolved at the Village level by Native people* with adequate resources and support from outside the village. The state's local option laws have not worked for Alaska's Native Villages. Those laws depend on the state law enforcement system, which is totally lacking in over 70 off-road communities. Another 64 communities have no certified police officers and are served exclusively by Village Public Safety Officers or Village Police Officers who have limited training and are not allowed to carry firearms. When the State extended the local option law to unincorporated Villages, it did not provide for real increases in police effort. A number of villages find the Local Option Law inconsistent with their accepted modes of community problem solving. Another reason for looking for local solutions is the fact that every solution imposed on Native Villages over the years has come from the outside. They were not designed or written by Native people. And they have not worked.

In its implementation report last December, AFN recommended that Congress establish clear authority for Alaska Native Villages to develop effective local programs to control and respond to alcohol, drug and inhalant abuse, domestic violence, and sexual assault at the local, community level. Only by empowering and funding local solutions can we begin to reduce alcohol abuse.

While we believe increased funding and support for programs that provide community outreach and education efforts, village initiatives, direct services for victims and other innovative

approaches to prevent domestic violence, sexual assault, and other violence against Alaska Native women and their families are important, prevention and treatment programs do not address the whole problem.

As noted in the recent Alaska Commission on Rural Governance and Empowerment, Alaska Native Villages need to be given the tools necessary to deal with alcohol and drug abuse, domestic violence, sexual assault and related problems at the local level. It's 1999 report specifically recommended that tribes, *through federal legislation*, be empowered to find local solutions through enforcement of tribal ordinances in areas surrounding their villages, and that there be adequate funding to effectively enforce, adjudicate and otherwise implement tribal programs.

All studies and statistics demonstrate that domestic violence, sexual assault, child abuse and other forms of violence are rampant in Alaska, and Alaska Natives, particularly women and children, are disproportionately victims of these crime. The one thing that can be proved beyond doubt is that when a Village goes from wet to dry and enforces that decision, the statistics improve. For example, according to the University of Alaska Justice Center, the national murder rate is 8 per 1,000,000 population; the murder rate in Alaska's dry Villages is 19 per 100,000; in wet villages, the murder rate is 40 per 100,000. The Barrow experience demonstrates the importance of alcohol control. In 1994, the Barrow Native leadership led a local option initiative under which Barrow became "dry" – liquor was totally banned. The positive effects were striking and immediate. Alcohol-induced birth defects declined from 45% of all births, to below 10%. Emergency injuries reportedly fell by 43%. Alcohol-related police calls fell by 81% and outpatient hospital visits dropped by 86%. Unfortunately, the community overturned the vote in 1995, and re-imposed it in 1996, only to be overturned again in 1997.

While I want to thank Congress and the Alaska delegation for funding many important programs, and for the new funding for such programs during this Congress, the constant rise in alcohol-related crimes in the Native community, together with the steady increases in other key indicators of social pathology directly related to alcohol abuse, provides clear evidence that the current methods of controlling alcohol's destruction are simply not working. Existing laws and programs are not sufficient to address the devastating and pervasive problems caused by alcohol in Native Villages. Unless this Congress intervenes and takes decisive action by giving local villages the tools they need to do the job themselves, the suffering and death will continue.

And, let me stress that we are talking about life and death situations here. We can not afford to wait for more studies or more negotiations over this issue. While Governor Knowles has just signed an Administrative Order recognizing Alaska's tribal governments, and has pledged to work more closely with Alaska's tribes in addressing some of the acute problems in rural Alaska, he made it clear when he began his negotiations with the tribes that he did not want his efforts to impede any ongoing initiatives. We applaud him for his Administrative Order and look forward to a more productive relationship between the State of Alaska and its Native people. But the Administrative Order does not change the urgency of the situation in rural Alaska. After the *Venetie* decision, which held that ANCSA lands are not "Indian country", Alaska tribes (with the exception of Metlakatla) are not able to avail themselves of the federal Indian country liquor laws. Under those laws, alcohol is illegal until the tribe votes to make it legal. In Alaska, alcohol is

legal until a community votes to make it illegal. The total lack of local police in many rural Villages has a serious impact on a community's ability to enforce local option laws, to maintain law and order and keep the peace. Many of the offenses are alcohol related. The absence of local police means that intoxicated gunmen have and will terrorize entire villages for hours and, depending on weather, even days, until State troopers are finally able to respond. It is clear that we need decisive congressional intervention – without it, our people will continue to suffer and die from alcohol-related offenses.

Our proposal is simple and direct. It gives Alaska Native Villages the tools they need to combat this serious problem at the local level. AFN has worked closely with Attorney General Reno and other Justice Department officials in an attempt to design a legislative approach that would give Alaska Native Villages the tools they need to effectively prohibit the importation, possession and sale of alcohol in Native villages. We view this legislation as a tool our communities can use and urge comprehensive monitoring to insure it does what it is intended to do. The legislation would be permissive to the community. There would be no requirement that every community adopt local ordinances dealing with alcohol – but for those communities that are serious about addressing the alcohol situation, it gives them a means of doing so. We believe it will help reduce these terrible statistics. To prove the effectiveness of this legislation, we suggest that the Department of Justice monitor its implementation and report back to Congress on whether local efforts to control importation, possession and sale of alcohol in Native villages has resulted in a reduction in alcohol-related crimes and other key indicators of alcohol abuse.

AFN's proposal is to place the authority for regulating transactions involving alcoholic beverages and the ability to prohibit the sale, importation or possession of alcoholic beverages, directly with Alaska Native Villages – the local entities capable of addressing the problem. The geographic scope of the legislation would be limited to the exterior boundaries of the villages' core townships, as identified for Village Corporation land selections under ANCSA.

The legislation would authorize willing Native Villages to handle offenses arising under tribal ordinances prohibiting and otherwise regulating the importation and use of alcohol within and in the area surrounding Native villages. For those Villages that are within incorporated cities, the authority provided by the legislation would be limited to transactions involving Alaska Natives, and only to the extent tribal law does not conflict with the city's alcoholic beverage control laws. This would allow the Native Villages to do what it takes, in culturally appropriate and effective ways, to address local alcohol problems.

Alaska Native Villages would submit their duly adopted alcoholic beverage control laws to the Secretary of the Interior, and the Secretary would certify and publish those laws in the Federal Register and insure that the law was in compliance with the Indian Civil Rights Act. The legislation would also provide a framework for concurrent State-tribal jurisdiction over alcohol related violations in Native villages pursuant to State/tribal agreements. Finally, as mentioned earlier, the Justice Department would be asked to monitor the implementation of this law and report back to Congress on the effectiveness of the legislation.

We fervently hope that you will agree that the situation is so grave that effective, no-nonsense federal action must be taken to save lives. We can't afford to wait any longer. It is time

to end the long cycle of government dependence. It is time to give Alaska's Native Villages the tools they need to assume responsibility for the prohibition, possession and sale of alcohol in their communities. Empowering and funding local solutions are the key to reducing alcohol abuse in Alaska's Native Villages. Finally, these tribal governments must be given adequate funding to effectively enforce, adjudicate and otherwise implement local alcohol programs. We would expect current U.S. Department of Justice and other federal programs that provide funding and other support for tribal police, tribal courts, and alcohol and drug programs to be made readily available in sufficient amounts to Alaska Native villages. I believe you have a historic opportunity to make a real difference in the lives of Alaska Natives.

I am attaching a copy of AFN's draft legislation to my written testimony, along with a brief description of the proposed legislation. I thank you for agreeing to schedule this expedited hearing.

ATTACHMENT A

Alaska Federation of Natives, Inc.
1577 C Street, Suite 300
Anchorage, Alaska 99501

AFN's Legislative Language

(a) Federally recognized Alaska Native villages shall have authority to regulate transactions involving alcoholic beverages, or to prohibit the sale, importation, or possession of alcoholic beverages, within the exterior boundaries of the villages' core townships identified for village corporation land selections by section 12(a) of the Alaska Native Claims Settlement Act; provided, that for Alaska Native villages within incorporated cities the authority provided by this section is limited to Alaska Natives and transactions involving Alaska Natives, and shall apply to the extent the tribal law does not conflict with the city's alcoholic beverage local option law, if any. Alaska Native villages shall submit their duly adopted alcoholic beverage control laws to the Secretary of Interior, and the Secretary shall certify and publish those laws in the Federal Register within 180 days, provided that the law is consistent with the Indian Civil Rights Act. Alaska Native villages are authorized to enter into agreements with the State of Alaska or subdivisions thereof respecting jurisdiction over and enforcement of alcoholic beverage controls.

ATTACHMENT B

AFN Legislative Proposal Analysis

1. **This legislation allows Federally recognized Tribes in Alaska to use their traditional and culturally appropriate authority and tribal resources to address critical alcohol problems within Alaska Native Villages.** Every study to address the problem of alcohol abuse in Alaska Native Villages in the last decade has reached the same conclusion – empowering and funding local solutions are essential to the reduction of alcohol abuse. By allowing tribal governments to design culturally appropriate solutions, laws and regulations, this legislation will give communities more control over aspects of their own lives. It also has the advantage of involving community leaders, especially the elders, in addressing the problem. At bottom, this is a “local control” issue.
2. **The delegation of authority is very limited and tied closely to Native lands or transactions between tribal members.** The Native Villages are granted the authority to regulate transactions involving alcoholic beverages, or to prohibit the sale, importation, or possession of alcoholic beverages, within the core Village townships – as identified for Village Corporation land selections in ANCSA. The geographic scope is thus tied directly to the core Village area. Congress clearly has the authority to legislate to control liquor among Alaska Natives, and its authority is most clear when the legislation is either linked to Native lands or its application is limited to Natives. In this case, the legislation is linked to both.
3. **The draft legislation is Constitutional.** The regulation of liquor among Native Americans is one of the oldest federal issues on record. In 1802, President Thomas Jefferson took steps to control liquor among the Indians. He proposed, and Congress enacted the federal provision restricting the sale or distribution of liquor among the Indians. The 1802 provision was not a criminal law, but the first criminal prohibitions were enacted in 1822 and 1832 and fines were added to the Trade and Intercourse Act of 1834. F. COHEN, *Handbook of Federal Indian Law* (1982 ed.) at 306-07. These provisions of the Trade and Intercourse Act have been broadened and carried forward to the present to prohibit the sale or distribution of liquor to all Indians, even outside Indian country. *See*, 18 U.S.C. §

1154. This provision is still part of the U.S. Code, but it is confined to Indian country by 18 U.S.C. § 1161. The prohibition of liquor in Indian country can be implemented by enactment of a tribal ordinance pursuant to 18 U.S.C. § 1161. The U.S. Supreme Court has repeatedly affirmed the exercise of this federal authority.¹ In fact, in *Rice v. Rehner*, the U.S. Supreme Court held that 18 U.S.C. § 1161 was a grant of jurisdiction to both tribes and the States to regulate liquor.

4. **AFN's draft legislative language is a specifically tailored delegation of power to fit Alaska's unique situation.** It is a specially tailored variation of 18 U.S.C. § 1161, designed to allow both the State and Alaska Native Villages to have jurisdiction over liquor matters. In the case of an unincorporated Village, where there is no state political subdivision government, this legislation would allow the Native Village to enact laws that would apply within the boundaries of the core village.
5. **AFN's proposed legislation would not conflict with State local option liquor laws.** For those villages within incorporated cities, the authority provided to Alaska Native villages would be limited to Alaska Natives and transactions involving Alaska Natives. Ordinances enacted by the Native Village Council would apply only to the extent they did not conflict with the city's local option law. In other words, the Native Village and the State would have concurrent jurisdiction.
6. **Native Villages would not be compelled to enact local option ordinances.** The legislation simply offers those Villages that are willing and able to take on the problem the tools to be able to do so effectively. Many villages have attempted to prohibit or regulate alcohol under State local option liquor laws. However, most of these efforts have failed. State law enforcement has not been effective in Villages for two basic reasons. First, it is not culturally appropriate. Traditional Native justice is based on moral authority, peer pressure and consensus, and punishment is based on restitution and community service rather than fines and imprisonment. It is these kinds of culturally appropriate, locally developed solutions that have proven successful in controlling alcohol abuse in tribal communities. Second, with rare exceptions, there are no State Troopers, State prosecutors or State courts in the villages to enforce state laws. The federal legislation proposed by AFN will enable village councils to adopt local tribal option laws, and enforce them in tribal courts.
7. **This Legislative Proposal does not create any tribal authority other than that, which directly addresses alcohol control issues within core village townships of**

¹ See, e.g., *Rice v. Rehner*, 463 U.S. 713 (1982) (states and tribes regulate liquor concurrently under federal law); *U.S. v. Mazurie*, 419 U.S. 544 (1975) (tribes can be constitutionally delegated authority to regulate liquor).

Alaska Native Villages. All it does is give the local communities a more culturally appropriate way of controlling and taking ownership of a serious community health and social problem. The legislation is very narrowly drafted to apply only to the core village areas. By federal statute, alcohol is flatly prohibited within “Indian country” unless and until the governing Tribe adopts an ordinance permitting it. In Alaska, just the opposite is true and would remain so under this legislation. In other words, the Native Village would have to adopt laws prohibiting or regulating alcohol. This is a very limited delegation of authority and does not add a geographic component to other tribal powers.

8. **Secretarial approval is required.** Alaska Native Villages opting to use this tool would have to submit their duly adopted alcoholic beverage control laws with the Secretary of the Interior for approval. The Secretary would not approve any law that did not comply with the Indian Civil Rights Act.
9. **The Secretary of the Interior would have to certify and publish the laws in the Federal Register within 180 days of its submission.**
10. **The legislation allows for and stresses Tribal/State cooperation.** The legislative proposal continues concurrent jurisdiction over liquor transactions in the State of Alaska. Thus, it encourages cooperative agreements with the State of Alaska or political subdivision thereof, respecting jurisdiction over and enforcement of alcoholic beverage controls.